

**ENTERED**

March 24, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA

§

VS.

§

BRIAN MATTHEW STARR

§ CRIMINAL ACTION NO. 2:01-CR-288-1  
§ (CIVIL ACTION NO. 16-CV-96)

**ORDER**

Brian Matthew Starr filed a motion for appointment of counsel to assist him with a motion to vacate, set aside or correct judgment pursuant to 28 U.S.C. § 2255 based upon *Johnson v. United States*, 136 S.Ct. 2551 (2015). D.E. 85.

A § 2255 movant is not automatically entitled to appointed counsel. See *United States v. Vasquez*, 7 F.3d 81, 83 (5th Cir. 1993); see also *Pennsylvania v. Finley*, 481 U.S. 551, 555, 107 S.Ct. 1990 (1987) (“We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.”) (internal citation omitted).

Starr’s motion (D.E. 85) for appointment of counsel is DENIED without prejudice. His motion to vacate, set aside or correct judgment pursuant to 28 U.S.C. § 2255 (D.E. 84) is ABATED for 90 days pending the Supreme Court’s decision in *Welch v. United States*, No. 14-15733, which is expected to resolve the current circuit split on the retroactivity of *Johnson*.

SIGNED and ORDERED this 24th day of March, 2016.

  
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Janis Graham Jack  
Senior United States District Judge